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Tillman Real Estate

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Thursday, July 29, 1999

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W. TW-A325
Washington, D.C. 20554

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99-217

References:

Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket No. 99-271

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98

Dear Ms. Salas:

Tillman Real Estate is in the commercial and residential real estate business. We own and manage apartments and shopping centers of varying sizes in the states of Alabama and Tennessee. We write in response to the FCC's Notice of Proposed Rulemaking released on July 7, 1999, regarding forced access to buildings. We enclose six (6) copies of this letter, in addition to this original.

We are concerned that any action by the FCC regarding access to private property by large numbers of communications companies may inadvertently and unnecessarily adversely affect the conduct of our business and needlessly raise additional legal issues. The Commission's public notice also raises a number of other issues that concern us.

Issues Raised by the FCC's Notice

First and foremost, we do not believe the FCC needs to act in this field because we are doing everything we can to satisfy our tenants' demands for access to telecommunications. In addition, the FCC's request for comments raises the following issues of particular concern to us: "nondiscriminatory" access to private property; expansion of the scope of existing easements; location of the demarcation point; exclusive contracts; and expansion of the existing satellite dish or "OTARD" rules to include nonvideo services.

FCC Action Is Not Necessary. We are aware of the importance of telecommunications services to tenants, and would not jeopardize rent revenue stream by actions that would displease tenants. We compete against many other like businesses in our market, and have the incentive to keep our properties up-to-date.

"Nondiscriminatory" Access. There is no such thing as nondiscriminatory access. There are dozens of providers out there, but limited space in buildings means that only a handful of providers can install facilities in buildings. "Nondiscriminatory" access discriminates in favor of the first few tenants. We must have control over space occupied by

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providers, especially when there are multiple providers involved. We must have control over who enters the building. Owners face liability for damage to the building, leased premises and facilities of other providers, and for personal injury to tenants and visitors. We are also liable for safety code violations. Qualifications and reliability of providers are a real issue. Deal terms vary because each deal is different. A new company without a track record poses greater risks than an established one, for example, so indemnity, insurance, security deposit, remedies and other terms may differ. Value of space and other terms also depend on many factors. We often have no control over terms of access for Bell companies and other incumbents; they were established in monopoly environment. The only fair solution is to let the new competitive market decide and allow owners to renegotiate terms of all contracts. We can't be forced to apply old contracts as the lowest common denominator when we had no real choice. If carriers can discriminate by choosing which buildings and tenants to serve, building owners should be allowed to do the same.

Scope of Easements. FCC cannot expand the scope of the access rights held by every incumbent to allow every competitor to use the same easement or right-of-way. Grants in some buildings may be broad enough to allow other providers in, but others are narrow and limited to facilities owned by the grantee. If we had known governments would allow other companies to piggy-back, we would have negotiated different terms. Expanding rights now would be a taking.

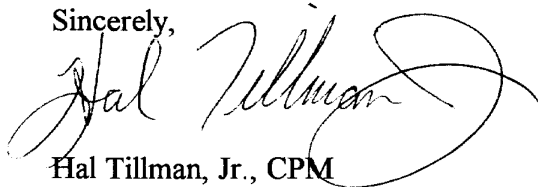
Demarcation Point. Current demarcation point rules work fine because they offer flexibility -- there is no need to change them. Each building is a different case, depending on our business plan, the nature of the property and the nature of the tenants in the building. Some owners are prepared to be responsible for managing wiring and others are not.

Exclusive Contracts. It is especially true in residential properties that there are benefits of exclusive contracts to our tenants, such as ability to aggregate demand and negotiate a better deal than they could get on their own.

Expansion of Satellite Dish Rules. We are opposed to the existing rules because we do not believe Congress meant to interfere with our ability to manage our property. The FCC should not expand the rules to include data and other services because the law only applies to antennas used to receive video programming.

In conclusion, we urge the FCC to consider carefully any action it may take. Thank you for your attention to our concerns.

Sincerely,



Hal Tillman, Jr., CPM

Enclosures (6 copies of this letter)